provides that "The want of performance of an obligation or the offer of performance, in whole or in part, or any delay therein, is excused . . . . when the debtor is induced not to make it, by any act of the creditor intending or naturally tending to have that effect, done at or before the time at which such performance or offer may be made, and not rescinded before that time." The code provision is but an application of the familiar principle[4] that one party can not lull another into a sense of security, either by actions or by telling him that he need not comply promptly with the time clause or other provision of a contract, and then declare a forfeiture for failure to strictly perform the contract. That this is not an alteration of the written contract by a parol agreement is shown by the fact that the vendor might have restored his right to declare a forfeiture for failure to pay the installments when due, by giving notice to the vendee that he intended to insist upon such right in the future.

An endless variety of illustrations might be given, where this rule has been applied. Thus, it is held that where an insurance company has been in the habit of giving its policy holders notice when their premiums are due, it is estopped from claiming a forfeiture if the delay in tendering a premium is caused by its failure to give the usual notice.[5] And a tender of certain bonds within the time of purchase is held to be excused where the vendor was induced by the vendee to believe that such tender would be unnecessary.[6] M. B. K.

Wills—Bequest to Widow of Monthly Allowance from the Death of the Testator—Election.—A right given by law must in the nature of things be superior to one given by the act of a party, and it is, therefore, a rule very generally recognized that where a right is given to a person by law and a testator confers upon the same person a benefit by will, the benefit is to be construed as something additional to that which that person would take as a matter of right. The most familiar illustration of this rule is to found in the law of dower. In the absence of statute, the provision made for the wife by the husband is deemed to be additional to the rights given her by the law.[1] And the same principle is applied in connection with a testator's devise where the community property system has supplanted the common law system of dower.[2]

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[4] Noyes v. Schlegel (1908), 9 Cal. App. 516, 99 Pac. 726.

[5] N. Y. Life Ins. Co. v. Eggleston (1877), 96 U. S. 572; Meyer v. Knickerbocker Life Ins. Co. (1878), 73 N. Y. 516; Union Cent. Life Ins. Co. v. Pottker (1878), 33 Ohio St. 459.

[6] Pierce v. Lukens (1904), 144 Cal. 397, 77 Pac. 996.

[1] This has been changed in England and many of the States of the United States by statute. 1 Woerner, American Law of Administrtion, Sec. 119 (2nd ed.)

[2] Payne v. Payne (1861), 18 Cal. 291, 301.

An interesting application of this fundamental rule is afforded by the Estate of Cowell,[3] where a testator left to his widow a monthly allowance to be paid her from the date of his death until the distribution of his estate. The statute gave her a family allowance as a matter of right. The benefit conferred by the testator was construed as being gratuity and not as a discharge of the obligation which existed upon the husband to support his wife and which the law continued after his death. The court of probate in fixing the amount of the family allowance should not therefore, even take into consideration the fact that a large monthly income would be derived by the wife from the husband's estate under his will. The widow is not put to an election except by a clear evidence of intention that the husband intended the benefit under the will to be in lieu of the right given by law.

A very singular exception to the doctrine that the will is presumed to give additional benefits, not to discharge legal obligation, was evolved by the English Court of Chancery in the case of bequests to persons who were creditors of the testator. If the amount of the legacy exceeded or was equal to the debt, a presumption of satisfaction arose.[4] The American courts have generally lamented the rule, and the presumption is displaced by very slight circumstances, for example, by the existence of a general direction or request to see that the testator's debts are paid.[5] It should be noted that, in the converse, where the testator leaves a legacy to a debtor, there is no presumption that the debt is forgiven.[6]

O. K. M.

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[3] Estate of Cowell, 45 Cal. Dec. 179 (decided February 7, 1913).

[4] Maitland, Equity, Lecture XIV.

[5] Glover v. Patten (1897), 165 U. S. 394, 410; Boughton v. Flint (1878), 74 N. Y. 476, 482.

[6] Zeigler v. Eckert (1847), 6 Pa. St. 13, 19.